



CV 03-1261 #1

FILED ENTERED
LODGED RECEIVED
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AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CV03-1261

PACIFIC MARKET, INC, a Washington
corporation, d/b/a PACIFIC MARKET
INTERNATIONAL,

Plaintiff,

vs

THERMOS L L C., a Delaware limited
liability company,

Defendant

CIVIL ACTION No

**COMPLAINT FOR TRADE DRESS
INFRINGEMENT AND UNFAIR
COMPETITION**

Plaintiff, Pacific Market, Inc, d/b/a Pacific Market International (hereinafter "PMI"), for
its complaint against Defendant, Thermos L L C (hereinafter "Thermos"), alleges as follows

THE PARTIES

1. PMI is a corporation of the State of Washington, having an address of 2125 Western
Avenue, Suite 501, Seattle, WA 98121

ORIGINAL

1 2 On information and belief, Defendant Thermos is a Delaware limited liability
2 company, having a business address of 2550 West Golf Road, Suite 800, Rolling Meadows,
3 Illinois 60008

4 **JURISDICTION AND VENUE**

5 3 This civil action arises under the federal unfair competition laws of the United States,
6 15 U S C § 1125(a) [Lanham Act §43(a)]; and under the Washington State Consumer Protection
7 Act R C W 19.86.020, et seq Thus, this Court has jurisdiction of this civil action under 28
8 U S C §§ 1338(a) and 1338(b) and supplemental jurisdiction under 28 U S C § 1367(a)

9 4 Venue with respect to the Defendant is properly laid in the United States District
10 Court for the Western District of Washington pursuant to 28 U S C §1391(b)(1) because on
11 information and belief the Defendant resides in the Western District of Washington within the
12 meaning of 28 U S C § 1397(c) and is doing business therein.

13 **FACTS COMMON TO ALL COUNTS**

14 5 PMI is a manufacturer and wholesale distributor of thermally insulated drinkware,
15 including the vacuum insulated bottles sold under the registered "STANLEY" mark shown in
16 Exhibits A, B and C attached hereto and herein referred to as the "Stanley Classic Tall Bottle,"
17 "Stanley Classic Wide Bottle," and "Stanley Blue Sport Bottle" individually and "Stanley
18 Products" collectively

19 6 PMI and its predecessors in interest have since at least as early as 1953 made, sold,
20 and transported in interstate commerce, and throughout the State of Washington, millions of its
21 Stanley products shown in Exhibits A, B and C PMI's customers for these products include
22 Target Stores
23
24
25

1 7. PMI's product configurations shown in Exhibits A through C are visually distinctive
2 and prominently displayed by PMI's customers to the purchasing public with and without
3 packaging on display shelves, and are recognized by PMI's customers as indicators of source
4 PMI's use of the "Stanley" designs shown in Exhibits A and B has been exclusive and
5 continuous and has resulted in the product configurations acquiring a secondary source-
6 indicating significance with PMI's customers PMI and its predecessors in interest have
7 extensively advertised the "Stanley" products to its customers

8 8 The overall look and feel of PMI's Stanley trade dress shown in Exhibits A and B is
9 inherently distinctive

10 9 On information and belief, Defendant Thermos is a retail and wholesale distributor of
11 steel and thermoplastic coffee mugs, thermal bottles, and beverage tumblers

12 10 Defendant Thermos has, on information and belief, since at least as early as
13 September 2002, offered to sell steel, insulated bottles substantially identical in appearance to
14 that shown in appended Exhibits D and E to the wholesale trade and to Target Stores for retail
15 sales as shown in Exhibit F, a true and accurate reproduction of a Target Stores newspaper
16 advertisement On information and belief, upon ordering Defendant's products shown in
17 Exhibits D and E, Target Stores did not reorder Plaintiff's Stanley product shown in Exhibit C

18 11 On information and belief, at least as early as September 2002, Defendant Thermos
19 has been engaged in the wholesale and retail sale of steel insulated bottles shown in Exhibits D
20 and E in this Judicial District Exhibits D and E are true and accurate copies of photographs of
21 the products sold by and distributed by Defendant Thermos in the State of Washington and in
22 this judicial district The Defendant's products shown in Exhibits D and E are confusingly
23 similar in external, nonfunctional appearance to PMI's Stanley products shown in Exhibits A, B
24 and C
25

1 12 Defendant Thermos's products shown in Exhibits D and E were and still are, on
 2 information and belief, sold and offered for sale at a lower wholesale price than PMI's products
 3 shown in Exhibits A through C. Therefore, on information and belief the Defendant has been
 4 well aware of the Plaintiff's product configurations and the trademark significance thereof, and
 5 has willfully and intentionally passed off its own products as identified in Exhibits D and E as
 6 those of PMI in commerce regulated by Congress.

7 **CLAIM FOR RELIEF, COUNT I**

8 **A. Violation of the Washington Consumer Protection Act**

9 13. PMI repeats and realleges each and every allegation contained in the
 10 paragraphs above as if recited herein.

11 14. The above described acts of Defendant Thermos constitute an unfair or deceptive act
 12 or practice and an unfair method of competition in the conduct of trade or commerce in violation
 13 of R C W 19 86 020 et seq that have infringed PMI's common law trademark rights and thereby
 14 injured PMI in its business and property.

15 15 Defendant's aforesaid acts have been knowing, willful, and without Plaintiff's
 16 permission and have been intended to trade on PMI's goodwill in the State of Washington.

17 **CLAIM FOR RELIEF, COUNT II**

18 **A. Common Law Unfair Competition**

19 16 PMI repeats and realleges each and every allegation contained in the
 20 paragraphs above as if recited herein.

21 17. PMI has been exclusively and continuously using the Stanley designs in Washington
 22 and in interstate commerce since at least as early as 1953 for thermally insulated drinkware.

23 18 Defendant's unauthorized use of the products identified in Exhibits D and E
 24 constitutes an attempt to pass off its goods as those of PMI and to compete unfairly with PMI.
 25 This conduct constitutes common law unfair competition.

A. Federal Trade Dress Infringement

21. Defendant's aforesaid products identified in Exhibits D and E are a false designation of origin, which is likely to confuse or has confused the public into believing that there is an affiliation, connection or association between the source of the Defendant's aforesaid products and the source of PMI's products shown in Exhibits A through C

22 PMI believes that it has been damaged, and will continue to be damaged, by such
confusion as to affiliation, connection or association of the type described

23 The Defendant's aforesaid acts have been knowing, willful, and without PMI's prior knowledge or consent and are therefore a violation of the Plaintiff's rights under 15 U S C §1125(a) [§ 43(a) of the Lanham Act]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of a judgment by this Court against the Defendant providing

(a) That the Defendant has violated the Washington State Consumer Protection Act, R C W 19 86.020 et seq , and is passing off its goods as those of PMI's in violation common law unfair competition,

(b) For an award of damages, together with interest, to compensate the Plaintiff for the Defendant's past acts of unfair competition and misidentification of origin, and that such an award be trebled, and for an award to Plaintiff of all of its costs and attorney's fees with respect thereto in accordance with R.C W 19 86 090,

(c) That the Defendant has violated § 43(a) of the Lanham Act;

(d) That the Defendant, its respective agents, servants, employees, attorneys and all other persons in active concert or in participation with the Defendant be preliminarily and permanently enjoined and restrained from making any false designation of origin which is likely to confuse the public, or cause mistake, or to deceive the public as to believing that there is an affiliation, connection or association of the Defendant with the Plaintiff by virtue of any similarity between the Defendant's thermal drinkware and the Plaintiff's thermal drinkware,

(e) For an award of damages in accordance with 15 U S C § 1117(a) including all of the Defendant's profits, damages sustained by the Plaintiff, and the costs of the action including a trebling of such damages and that the Court determine that this is an exceptional case and award the Plaintiff its reasonable attorney's fees,

1 (f) For other and further relief as is provided by law and that this Court deems just
2 and equitable

3 DATED this 9th day of June, 2003

4 DORSEY & WHITNEY LLP

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17 Attorneys for

18 Pacific Market, Inc , d/b/a Pacific Market
19 International
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21
22
23
24
25

EXHIBIT A



EXHIBIT A

EXHIBIT B



EXHIBIT B

EXHIBIT C



EXHIBIT C

EXHIBIT D



EXHIBIT D

EXHIBIT E

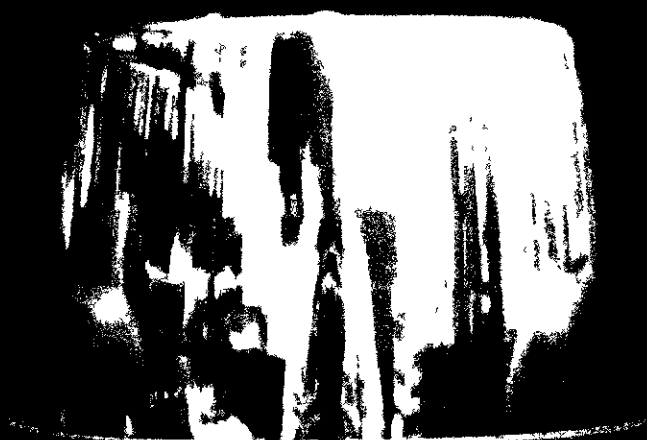


EXHIBIT E

EXHIBIT F



JS 44 (Rev 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I (a) PLAINTIFF PACIFIC MARKET, INC., a Washington corporation, d/b/a PACIFIC MARKET INTERNATIONAL (b) County of Residence of First Listed Plaintiff King (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANT THERMOS L.L.C., a Delaware limited liability company County of Residence of First Listed _____ (EXCEPT IN U.S. PLAINTIFF CASES) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED
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(c) Attorney's (Firm Name, Address, and Telephone Number) Peter S. Ehrlichman/Dorsey & Whitney LLP 1420 Fifth Avenue, #3400 Seattle, WA 98101 (206-903-8800)	Attorneys (If Known)
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II BASIS OF JURISDICTION (Place an "X" in One Box Only)		III PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON (For Diversity Cases Only)	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 2 Incorporated or Principal Place of Business In another State <input type="checkbox"/> 3 Foreign Nation

IV NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor <input type="checkbox"/> 791 Empl Ret Inc Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to	<input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to	<input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to	<input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to

(PLACE AN "X" IN ONE BOX ONLY)

V ORIGIN						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgement

VI CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
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15 U.S.C. §§ 1051 to 1129 (The Lanham Act)

VII REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ Preliminary and Permanent Injunction Plus Damages	CHECK YES only if demanded in complaint JURY DEMAND <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII RELATED CASE(S) IF ANY (See instructions)

DATE <u>6/9/03</u>	JUDGE _____	DOCKET NUMBER _____	SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>
FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	_____